

Maine Revised Statutes
Title 11: UNIFORM COMMERCIAL CODE
Article :

§1-1303. COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE

(1). A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

- (a). The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and [2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]
- (b). The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection. [2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

[2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

(2). A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

[2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

(3). A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

[2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

(4). A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

[2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

(5). Except as otherwise provided in subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

- (a). Express terms prevail over course of performance, course of dealing and usage of trade; [2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]
- (b). Course of performance prevails over course of dealing and usage of trade; and [2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]
- (c). Course of dealing prevails over usage of trade. [2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

[2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

(6). Subject to section 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

[2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

(7). Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

[2009, c. 325, Pt. A, §2 (NEW); 2009, c. 325, Pt. A, §4 (AFF) .]

SECTION HISTORY

2009, c. 325, Pt. A, §2 (NEW). 2009, c. 325, Pt. A, §4 (AFF).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 126th Maine Legislature and is current through August 1, 2014. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.